

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	File Number EB-02-PA-280
)	
Statcom Communications Corp.)	NAL/Acct. No. 200332400007
)	
Staten Island, New York)	FRN 0005-1410-72
)	

FORFEITURE ORDER

Adopted: January 24, 2005**Released: January 26, 2005**

By the Assistant Chief, Enforcement Bureau:

I. INTRODUCTION

1. In this *Forfeiture Order* (“*Order*”) we issue a monetary forfeiture in the amount of twelve thousand dollars (\$12,000) to Statcom Communications Corporation (“Statcom”) for willful and repeated violation of Section 1.903(a) of the Commission’s Rules (“Rules”).¹ The noted violation involves Statcom’s operation of two trunked radio systems at an unauthorized location and operation on an unauthorized frequency, 462.075 MHz.

2. On January 27, 2003, the District Director of the Commission’s Philadelphia, Pennsylvania Field Office (“Philadelphia Office”) issued a *Notice of Apparent Liability for Forfeiture* (“NAL”) to Statcom for a forfeiture in the amount of twelve thousand dollars (\$12,000).² Statcom filed a response on February 28, 2003.

II. BACKGROUND

3. On July 30 and 31, 2002, in connection with a complaint of operation of a trunked radio system at an unauthorized location in Staten Island, New York, agents from the Commission’s Philadelphia Office and its New York, New York Field Office (“New York Office”) inspected the alleged unauthorized location. The agents inspected a single trunked radio system and observed unauthorized operation on the frequencies 477.8125 MHz, 462.450 MHz, 461.450 MHz, 478.0875 MHz, 472.5125 MHz, 461.825 MHz, 462.025 MHz, 461.775 MHz, 461.475 MHz and 462.075 MHz (“the frequencies”) at 700 Victory Boulevard, Staten Island, New York (“Parkview House site”). The agents determined that the radio system was operated by Statcom.

4. Based on the agents’ search of Commission records, they determined that Statcom did not have an authorization for operation at the Parkview House site. At the time of the inspection, the agents found that Commission records stated that Statcom had been issued authorizations for operation of two trunked radio systems on Staten Island, New York at: 10 Highpoint Road,³ (“Todt Hill site”) and 631

¹ 47 C.F.R. § 1.903(a).

² *Notice of Apparent Liability for Forfeiture*, NAL/Acct. No. 200332400007 (Enf. Bur., Tampa Office, released January 27, 2003).

³ Statcom was authorized to operate stations WIL718 (477.8125 MHz), WPPH856 (462.450 MHz), KNEW768 (461.450 MHz), WIL766 (478.0875 MHz and 472.5125 MHz), and WNIH640 (461.825 MHz) at the Todt Hill site.

Howard Avenue,⁴ (“Wagner College site”). The agents’ search of Commission records did not reveal that Statcom had authority to operate on the frequency 462.075 MHz at any location.

5. On July 31, 2002, during the investigation, agents interviewed Howard Miller, Statcom’s President, who admitted that Statcom had relocated the authorized operations at the Todt Hill and Wagner College sites to the unauthorized Parkview House site as a single trunked radio system without authorization from the Commission. The unauthorized operation on frequency 462.075 MHz was not addressed by Mr. Miller.

6. On August 5, 2002, the Philadelphia Office issued a *Notice of Violation* (“NOV”) to Statcom for violating Section 1.903(a) of the Rules by operating two trunked systems at the Parkview House site, an unauthorized location, and operating on frequency 462.075 MHz, an unauthorized frequency. On August 19, 2002, Statcom responded to the NOV pointing out that prior to the September 11, 2001 destruction of the World Trade Center (“9/11”), it had a 22 channel trunked radio system located at the World Trade Center (“WTC site”). Statcom states that its system at the WTC site was its primary communications system, and after losing this system as a result of 9/11, it states further that it was forced to load its entire customer base on its system at its Todt Hill site. When operation from that site proved to be inadequate for the needs of Statcom’s customers, it then modified its WTC site system licenses for operation at 1 Chrysler Building, New York, New York (“Chrysler Building site”). To supplement the coverage provided by its modified operation, which still appeared to be inadequate, Statcom decided to construct 4 channels for operation from the Wagner College site. The Wagner College site, according to Statcom, proved to provide inadequate coverage, and it stated that it combined its licensed trunked radio systems from its other authorized locations (Todt Hill and Wagner College) at the Parkview House site in an effort to provide the same coverage that it had from the WTC site prior to 9/11. Statcom states that it experienced interference at the Parkview site, and admitted that while trying to provide interference free communications from the site, it modified its other area licenses for operation from the Parkview site without Commission authority. It explained further that applications had been filed for operation from the Parkview site, and that it was in the process of applying for special temporary authority (“STA”) to cover operation from the site.

7. On September 10, 2002, Statcom filed a supplemental response to the NOV informing the Philadelphia Office that its operation on frequency 462.075 MHz was pursuant to an agreement with Frequency Plus Corporation, a licensee authorized to use 462.075 MHz. In a September 23, 2002, letter, Frequency Plus Corporation confirmed the agreement, but stated that the Todt Hill site was the agreed upon location for Statcom’s operation and that it did not authorize or have knowledge of the transmitter’s relocation from its licensed site to any other location.

8. On January 27, 2003, the Philadelphia Office issued the subject NAL to Statcom for operating a radio station without Commission authorization for the location in apparent willful and repeated violation of Section 1.903(a) of the Rules. The Philadelphia Office noted that its inspection took place almost a year after 9/11, which should have given Statcom a sufficient amount of time to submit the appropriate applications for the modified operations. Additionally, the Philadelphia Office noted in the NAL that none of the frequencies at the Parkview House site were ever authorized to operate from the World Trade Center, as all of the frequencies found at the time of the inspection were authorized for operation from the Todt Hill and Wagner College sites,⁵ and that Statcom had relocated its WTC licensed frequencies to the Chrysler Building site after 9/11. However, this does not mitigate the subsequent rule

⁴ Statcom was authorized to operate station WPUD412 on 462.025 MHz, 461.775 MHz and 461.475 MHz at the Wagner College site.

⁵ The frequencies previously located at the WTC site prior to 9/11 were relocated to the Chrysler Building site prior to Statcom’s unauthorized operation from the Parkview House site, and none of the modified WTC frequencies were observed at the Parkview House site during the inspection by the Philadelphia Office.

violations set forth in the *NAL*. Finally, the Philadelphia Office noted that Statcom's operation of frequency 462.075 MHz at the Parkview House site was inconsistent with the license for that frequency held by Frequency Plus Corp., which only authorized operation from the Todt Hill site. In its February 28, 2003, response, Statcom repeated its prior admissions and set forth as mitigation of its violation: its needs after 9/11, including monetary and client losses; its prior modification of the licenses to enable operation at other locations; its intent to operate with FCC authority; its reliance on a contractor to obtain the necessary STA and license modifications; its immediate remedial steps to correct the situation when informed of the violation; the inadvertent nature of the violation; the proximity of the unauthorized operation to the authorized locations;⁶ and asserted its financial inability to pay a forfeiture. It also cited *Lawrence E. Vaughn*, 9 FCC Rcd 4438 (Priv. Rad. Bur. 1994) ("*Vaughn*"), in support of its contention that the location at Parkview House site was within the Commission's authorized area of operation for its licensed coordinates

III. DISCUSSION

9. The proposed forfeiture amount in this case was assessed in accordance with Section 503(b) of the Act,⁷ and *The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, 12 FCC Rcd 17087 (1997), *recon. denied*, 15 FCC Rcd 303 (1999) ("*Policy Statement*"). In examining Statcom's response, Section 503(b) of the Act requires that the Commission take into account the nature, circumstances, extent and gravity of the violation and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and such other matters as justice may require.⁸

10. Section 1.903(a) of the Rules requires that stations in the Wireless Radio Services must be used and operated only in accordance with the rules applicable to their particular service and with a valid authorization granted by the Commission. Statcom was authorized to operate two trunked radio systems at specific locations on Staten Island.⁹ At the time of inspection, Statcom was admittedly operating from neither location. Statcom admits that it had previously moved to another authorized location prior to moving to the unauthorized location. Thus, Statcom was aware of the need for the modification, but chose not to make certain that the license modification was approved prior to beginning its operation at Parkview House site. Based on Statcom's admissions and the agents' observations during the inspection, we conclude that Statcom willfully¹⁰ and repeatedly¹¹ violated Section 1.903(a) of the Rules by combining and operating without authorization its two trunked radio stations from an

⁶ Statcom states that the locations were within 1.70 miles and 0.68 miles of the authorized Todt Hill and Wagner College sites.

⁷ 47 U.S.C. § 503(b).

⁸ 47 U.S.C. § 503(B)(2)(D).

⁹ The Todt Hill site and the Wagner College site. *See* notes 3 and 4, *supra*. Each location had specific coordinates from which transmissions were permitted.

¹⁰ Section 312(f)(1) of the Act, 47 U.S.C. § 312(f)(1), which applies to violations for which forfeitures are assessed under Section 503(b) of the Act, provides that "[t]he term 'willful,' ... means the conscious and deliberate commission or omission of such act, irrespective of any intent to violate any provision of this Act or any rule or regulation of the Commission authorized by this Act...." *See Southern California Broadcasting Co.*, 6 FCC Rcd 4387, 4388 (1991).

¹¹ As provided by 47 U.S.C. § 312(f)(2), a continuous violation is "repeated" if it continues for more than one day. The Conference Report for Section 312(f)(2) indicates that Congress intended to apply this definition to Section 503 of the Act as well as Section 312. *See* H.R. 97th Cong. 2d Sess. 51 (1982). *See Southern California Broadcasting Company*, at 4388.

unauthorized location (Parkview House site),¹² and by operating on an unauthorized frequency from the same location.

11. Statcom seeks mitigation for its violation because of problems it experienced in relocating its operation, to satisfy the demands of its customers due to the destruction of its antenna tower on 9/11, and on the basis of its good faith effort to comply with the Commission's Rules. We understand that Statcom was operating from the top of one of the World Trade Center buildings, and its operation ceased because of the destruction of the World Trade Center buildings. However, we find that Statcom's operation on the various frequencies from an unauthorized location more than a year after 9/11 does not mitigate its violation of Section 1.903 of the Rules.

12. Further, Statcom states that it made a good faith effort to comply with the Commission's requirements prior to relocating the frequencies. However, this statement is not supported by any documentation that would allow us to determine what good faith efforts, if any, were taken to ensure compliance with our Rules prior to our investigation and inspection.¹³ We therefore conclude that Statcom is not entitled to a reduction on the basis of good faith.

13. Statcom cites inadvertence in its violation, blaming the failure of its contractor to submit the needed paperwork for license modification. It is well settled that as a licensee, Statcom is responsible for both knowing the Commission's Rules and complying with them and is responsible for its agent's work.¹⁴ Statcom is responsible for the actions of its agent.¹⁵ Moreover, Statcom's remedial efforts to correct the violation, after the violation was discovered by the Commission are not a mitigating factor. *See Seawest Yacht Brokers*, 9 FCC Rcd 6099 (1994), "corrective action taken to come into compliance with Commission rules or policy is expected, and does not nullify or mitigate any prior forfeitures or violations." *See also, Station KGVV, Inc.*, 42 FCC 2d 258, 259 (1973).

14. Nor can Statcom rely upon *Vaughn* for its proposition that its operation was within authorized limits, citing a 1.6 km variance from authorized coordinates as acceptable. *Vaughn* is inapposite because *Vaughn* concerns mitigation for error in the initial location and construction of a tower structure. It holds that initial tower construction greater than 1.6 km from the authorized location coordinates is sufficient to permit filing a Finder's Preference claim.¹⁶ Statcom's situation involves the unauthorized relocation of its stations from the coordinates on its licenses *after* its initial licenses were granted and constructed. This is not a situation involving a good faith *initial* effort on Statcom's part to construct on the coordinates assigned to the licenses. Thus, the situations are totally dissimilar.

15. Statcom's request for cancellation of the forfeiture due to financial distress was not accompanied by its tax returns from 1999 through 2001, or any other documentation as set forth in paragraph 14 of the *NAL*. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted. Accordingly, there is no basis to cancel the

¹² The Commission's Rules applicable to Statcom's operation, 47 C.F.R. §§ 90.135(b) and 90.175, require frequency coordination for modification of a license's location coordinates for a constructed transmitter tower, prior to relocation of the tower. In order to operate from the Parkview House site, Statcom was required to obtain a license authorizing operation from the coordinates for the Parkview House site.

¹³ Statcom states that prior to the move it contacted its licensing representative to "do whatever had to be done" to obtain Commission authorization to operate from the Parkview House site. *See* ¶ 13 *supra*. However, Statcom has provided no documentation of what was actually done to obtain the proper authorization.

¹⁴ *Eure Family Limited Partnership*, 17 FCC Rcd 21861, 21863 - 21864, ¶¶ 5-7 (2002).

¹⁵ *Id.*

¹⁶ The Finder's Preference Program expired 1997, *see, In the Matter of Amendment of Part 90 of the Commission's Rules to Facilitate Future Development of SMR Systems in the 800 MHz Band*, 12 FCC Rcd 9972 (1997).

assessed forfeiture amount due to inability to pay.

16. After careful review and consideration of the circumstances, degree of culpability and the nature of the violation, the dispositive fact is that the record evidence shows Statcom knew that a modification of its license was required for relocating its trunked radio system prior to the date FCC agents first observed it transmitting at Parkview House without an authorization. Statcom knew it had not received authorization to move its tower location, yet, nevertheless chose to operate without authorization for its location. We reject Statcom's argument that its action was due to the events of 9/11 and that it was compelled to operate as it did. Statcom's rationale is belied by the facts that 10 months had transpired since the events of 9/11 and that Statcom had previously modified its license as a direct result of 9/11.

17. We have examined Statcom's response to the *NAL* pursuant to the statutory factors above, and in conjunction with the *Policy Statement* as well. As a result of review, we conclude that Statcom willfully and repeated violated Section 1.903(a) of the Rules and we find no grounds to reduce or cancel the forfeiture amount proposed by the *NAL*.

IV. ORDERING CLAUSES

18. Accordingly, **IT IS ORDERED** that, pursuant to Section 503(b) of the Act, and Sections 0.111, 0.311 and 1.80(f)(4) of the Rules,¹⁷ Statcom Communications Corporation **IS LIABLE FOR A MONETARY FORFEITURE** in the amount of twelve thousand dollars (\$12,000) for willful violation of Section 1.903(a) of the Act.

19. Payment of the forfeiture shall be made in the manner provided for in Section 1.80 of the Rules within 30 days of the release of this *Order*. If the forfeiture is not paid within the period specified, the case may be referred to the Department of Justice for collection pursuant to Section 504(a) of the Act.¹⁸ Payment of the forfeiture must be made by check or similar instrument, payable to the order of the Federal Communications Commission. The payment must include the NAL/Acct. No. and FRN No. referenced above. Payment by check or money order may be mailed to Forfeiture Collection Section, Finance Branch, Federal Communications Commission, and P.O. Box 73482, Chicago, Illinois 60673-7482. Payment by wire transfer may be made to ABA Number 071000013, receiving bank Bank One, and account number 1165259. Requests for full payment under an installment plan should be sent to: Chief, Revenue and Receivables Operations Group, 445 12th Street, S.W., Washington, D.C. 20554.¹⁹

20. **IT IS FURTHER ORDERED** that a copy of this Order shall be sent by first class mail and certified mail return receipt to Frederick J. Day, Esq., 5673 Columbia Pike, Suite 100, Falls Church, VA 22041.

FEDERAL COMMUNICATIONS COMMISSION

George R. Dillon
Assistant Chief, Enforcement Bureau

¹⁷ 47 C.F.R. §§ 0.111, 0.311, 1.80(f)(4).

¹⁸ 47 U.S.C. § 504(a).

¹⁹ See 47 C.F.R. § 1.1914.